IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.579 of 2000

Vellingiri @ Thambi .. Appellant

-vs-

State, by Inspector of Police,
Puliyampatti Police Station,
Erode District.
(Crime No.252 of 1998). .. Respondent

Appeal against the judgment of the learned I Additional Sessions Judge cum Chief Judicial Magistrate, Erode, made in S.C.No.122 of 1999 dated 31.5.2000.

!For Appellant : Mr.N.Manokaran

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The appellant in the above appeal challenges his conviction and sentence. He was tried before the learned I Additional Sessions Judge, Erode, on an allegation that at 6.00 a.m. on 6.9.98, he beat the deceased Gandhimathi with a stick and thereby caused her death and that in the course of the same transaction, he also attempted to murder P. W.1, the husband of the deceased Gandhimathi. The learned trial Judge framed charges against the appellant, who, in this judgment, will be referred to as 'the accused', under Section 307 I.P.C. for attempting to murder P.W.1 and under Section 302 I.P.C. for causing the death of Gandhimathi. The learned Sessions Judge, on the evidence adduced, both oral and documentary, acquitted the accused under Section 307 I.P.C., but found him guilty under Section 323 I.P.C. for causing simple injuries to P.W.1 and sentenced him to rigorous imprisonment for a period of six months. The learned Sessions Judge, on convicting the accused under Section 302 I.P.C., sentenced him to imprisonment for life.

2. The case of the prosecution is as follows:-

The deceased is the wife of P.W.1 and P.W.10 is their daughter. P.W.4 is the mother of P.W.1 and P.W.6 is the younger brother of P.W.1. The accused is the eldest brother's son of P.W.1. They were residents of Vinnapalli at Gopikarathottam. There was a long-standing dispute between P.W.1 and the father of the accused, Murugesan, who is the eldest brother of P.W.1, as regards a land property. There used to be quarrels between the family of the accused and the family of P.W.1 and the villagers used to mediate and settle the dispute. On 5.9.9 8, P.W.1 left for Puliyampatti to sell vegetables and his wife, Gandhimathi and P.W.10, her daughter, went to the common well to fetch water, where the accused prevented the deceased from taking water, leading to a quarrel between the deceased and the accused. The deceased went to Puliyampatti police station and gave a petition to P.W.16, the head constable. The police officers sent for the accused and took him to

task. He was also advised not to indulge in such activities in future. This is said to be the immediate provocation for the occurrence, which took place at 6.00 a.m. on 6.9.98.

3. At 6.00 a.m. on 6.9.98, the deceased was standing in front of the house and was brushing her teeth. P.W.1 and his mother, P.W.4, were also present. The accused went there with a stick, M.O.1, in his hand and beat P.W.1 on the head. The said beating was warded off, as a result of which, he suffered injuries on both hands. On seeing P.W.1 being beaten, the deceased intervened and the accused, leaving P.W.1, ran towards the deceased and beat her. She fell down. Thereafter, indiscriminate beatings were inflicted upon the deceased. After inflicting injuries on the deceased, the accused ran away from the place. P.W.10, the daughter, who had gone to the house of P.W.5 to took her bed, and P.W.4, the mother of P.W.1, on hearing the cries, also witnessed the occurrence. P.W.1 left the scene of occurrence for Sathiamangalam, where he engaged a taxi and brought it to the village, in which, Gandhimathi, the injured, was placed and taken to Government Hospital, Sathiamangalam, where she was produced before the doctor, P.W.9. P.W.9, on examining Gandhimathi, found her dead. He also examined P.W.1 as he found the following injuries on his person:-

1. Contusion over right exterior aspect of forearm just below elbow joint.
2. An abrasion with contusion 4 cm. x 2 cm. over left dorsal aspect of left elbow.
3. Contusion on and swelling of the left middle and ring finger.

Ex.P.6 is the copy of the accident register issued by the doctor. A telephonic message was sent to the police station at Sathiamangalam and on receipt of the telephonic message, the police officer at Sathiamangalam re-conveyed the said message to Puliyampatti police station over phone, as the occurrence had taken place within the jurisdiction of Puliyampatti. On receipt of the intimation over phone from Sathiamangalam, P.W.18, the Sub-Inspector of Puliyampatti police station, proceeded to Government Hospital, Sathiamangalam, where, finding P.W.1, questioned him. He gave a statement regarding the incident and the same was reduced into writing. Ex.P.1 is the said statement. P.W.18 returned to the police station and

registered a case in Crime No.2 52 of 1998 against the accused under Sections 307 and 302 I.P.C. Ex.P.18 is a copy of the printed first information report. He sent express reports to the higher officials. Investigation was taken up by P.W.19, the Inspector of Police, Puliyampatti Police Station.

4. P.W.19, on taking up investigation in the crime, reached the scene of occurrence, where he prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.20. He seized blood-stained earth and sample earth, M.Os.3 and 4, under a mahazar, Ex.P.3. The inquest was conducted over the body of Gandhimathi between 1.30 p.m. and 3.30 p. m. in the presence of panchayatdars and at the time of inquest, P.Ws.1 to 4 and 10 were questioned and their statements were recorded. After the inquest, a requisition was sent to the doctor with the dead body for the purpose of conducting autopsy.

5. On receipt of the requisition, P.W.9, the Assistant Surgeon attached to Government Hospital, Sathiamangalam, conducted autopsy and found the following injuries:-
1. A lacerated injury about 4 cm. x 3 cm. x 4 cm. with cracking sound inside with bleeding over ramus of the right mandibular region.
2. Lacerated injury 2 cm. x 0.5 cm. x 4 cms. over the ankle of the mandible right.
3. A contusion over the right angle of the mandible including the upper neck and posterior part of the right ear baggie swelling with discolouration.
4. A contusion over the right scapula. Bleeding from right ear and mouth present.

The doctor issued Ex.P.8, the post-mortem certificate, with his opinion that the deceased died on account of haemorrhage inside the brain and due to injury to vital organs and important vital structures like right carotid arteries, internal jugular vein and right vagus nerve as well as Neuro vascular bandle.

6. P.W.19, continuing with his investigation, questioned witnesses and recorded their statements. The blood-stained shirt, M.O.2, produced by P.W.1, was seized. The blood-stained clothes, produced by the constable, who was present at the time of post-mortem, were also seized under Form 95. On an information received on 7.9.98, he proceeded to Kuppanthurai, where he arrested the accused in the presence of P.W.8. The accused gave a statement and the admissible portion is Ex.P.4 and the same was attested by P.W.8. The accused, in pursuance of the admissible portion of the statement, took the police party to Vinnappalli and from underneath a bridge, produced M.O.1, the stick, which was seized under a mahazar, Ex.P.5 attested by the same witness. The accused was brought to the police station at 11.00 a.m. and locked up and on the next day, he was sent to Court for remand. On 11.9 .98, the Sub-Inspector, the head constable and other police officers were examined, whose statements were recorded. On 12.9.98, the post-mortem certificate was obtained from the doctor, P.W.9, who conducted autopsy. The material objects were sent to Court with a request to forward them for analysis and after the completion of investigation, the final report was filed against the accused on 27.9.98.

7. The accused was questioned under Section 313 Cr.P.C. on

the incriminating circumstances appearing against him. He denied all the incriminating circumstances. He did not examine any witness on his side.

8. The learned counsel appearing for the appellant-accused contends that the occurrence must have taken place much earlier and Ex.P.10, the petition given by the deceased to P.W.16, the head constable, on 5.9.98, was belatedly despatched to Court and therefore, the present version that the accused had a motive to attacked the deceased cannot be accepted. He further contends that since the accused has used only stick and caused injuries on the mandible, the offence committed by him will only fall under Section 304 Part-II I.P.C. and his conviction under Section 302 I.P.C. has to be set aside. On the above contentions, we have heard the learned Government Advocate.

9. The cause of death of Gandhimathi is beyond dispute. The doctor, P.W.9, who conducted autopsy and who issued Ex.P.8, has stated in his evidence that Gandhimathi died on account of the injuries suffered by her and that the injuries could have been caused with a stick like M.O.1. We, therefore, hold that Gandhimathi died on account of homicidal violence.

10. P.Ws.1, 4 and 10 were examined before the trial Court to prove that the accused inflicted the injuries on the deceased and of the three witnesses, P.W.1 is an injured witness. P.Ws.1, 4 and 10 are also related to the deceased, in that, P.W.1 is the husband, P.W.4 is the mother of P.W.1 and P.W.10 is the daughter of the deceased. The fact that they are related to the deceased is no ground to reject their version and in fact, the accused is also closely related to the deceased, in that, he is the elder brother's son of P.W.1. According to the prosecution, the occurrence had taken place on account of a property dispute between the two families and that whenever quarrels arose between the two families, the villagers used to mediate and settle the dispute. On the previous day, that is on 5.9.98, when the deceased went to the common well to fetch water, she was prevented by the accused, leading to a quarrel, during which, the accused kicked the deceased and P.W.10 and seized the pot from her and the deceased went to the police station and gave a complaint, which was treated as a petition. The said complaint has been marked as Ex.P.10 and according to the officer, the accused was called and advised not to indulge in such activities in future. The evidence of the witnesses, therefore, show that there was a longstanding enmity between the two families on account of the dispute, which was in existence regarding a land. On the previous day, the deceased and her daughter were kicked by the accused leading to a complaint, which is said to be the immediate motive. On the date of incident, at about 6.00 a.m., P.W.1, with his mother P.W.4, was sitting in front of the house and the deceased was brushing her teeth. The accused went there and beat P.W.1 with a stick, M.O.1, which he had in his hand. On seeing this, the deceased intervened and she was chased and beaten indiscriminately. The evidence of P.W.1 is supported by P.W.10, the daughter, who had taken her bed in her neighbour's house. According to her, on hearing the cries, she came out of the house and saw the accused beating the deceased. We have no reason to reject either the evidence of P.W.1 or P.W.10. P.W.4 , the mother of P.W.1, also claimed before the trial Court that she witnessed the incident. But, in cross-examination, she has stated that on hearing the

cries, she came out and saw the deceased lying on the ground with injuries. Therefore, it is possible that P.W.4 could have come out of the house, after the occurrence was over; but the fact remains that P.Ws.1 and 10 had seen the accused beating the deceased. P.W.1 also suffered injuries during the course of the same transaction and that he went to the hospital taking his wife in a taxi. He was examined by P.W.9, the doctor, who found injuries on his person. The doctor questioned him as to how he suffered injuries and P.W.1 informed that he was beaten by his brother's son in his house. The evidence of P.W.1 that he suffered injuries at the time of incident is a strong circumstance to indicate that P.W.1 was present and witnessed the incident. We find no reason to reject the evidence of P.W.1 or the evidence of P.W.10 on the ground that they are relatives of the deceased.

11. The suggestion made to the witness that the occurrence must have taken place on the previous night is to be stated only to be rejected, in view of the findings of the doctor, who conducted autopsy. On internal examination, the doctor found empty bladder and stomach, which shows that the occurrence must have taken place only at 6.00 a. m. on 6.9.98. The fact that Ex.P.10, the petition given by the deceased to P.W.16, the head constable, on the previous day, was belatedly despatched and received by the Magistrate at a later point of time is no ground to reject the prosecution version, since Ex.P.10 was not even registered as a crime, but was treated as a petition and later, sent to Court by the head constable. The case of the prosecution cannot be thrown overboard on account of the delay in Ex.P.10 reaching the hands of the Magistrate.

12. We are also unable to accept the contention of the learned counsel that since the accused has used only a stick and caused injuries on the mandible, the offence will not fall under Section 302 I.P.C. The prosecution, to prove the offence of murder, is expected to establish that the accused caused bodily injury with intention of causing such bodily injury, which is likely to cause death of the person, to whom the harm is caused, as could be seen from Secondly to Section 3 00 I.P.C. In this case, the accused beat the deceased with a stick and it is not his defence that he did not intend to cause the injuries, which the deceased suffered on account of the beating and that the accused also had no case that the injuries were accidental in nature. Once it is established that the accused intended to cause the said injuries and that the injuries are suff icient in the ordinary course of nature to cause death, then the accused, who caused such injuries, is liable to be punished under Section 302 I.P.C. In this case, the accused having caused the injuries, which he intended to cause which led to the death of Gandhimathi, we reject the contention of the learned counsel and hold that the accused was rightly convicted for the offence of murder. The conviction of the accused under Section 323 I.P.C. by the learned trial Judge for causing injuries to P.W.1 cannot also be interfered with, since the evidence of P.W.1, supported by P.W.9, establish that the accused inflicted simple injuries on P.W.1. We, therefore, uphold the conviction of the accused and dismiss the appeal.

Index: Yes
Website: Yes

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To

1.The I Additional Sessions Judge, Erode.
2.-do- Thro' The Principal Sessions Judge, Erode.
3.The District Collector, Erode.
4.The Director General of Police, Chennai.
5.The Superintendent, Central Prison, Coimbatore.
6.The Inspector of Police, Puliyampatti Police Station, Kanyakumari District.
7.The Public Prosecutor, High Court, Madras.